

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA USED CAR LEMON LAW ACT;
PROVIDING DEFINITIONS; CREATING WARRANTY REQUIREMENTS; PROVIDING FOR ARBITRATION OF
WARRANTY DISPUTES; REQUIRING DISCLOSURE OF CERTAIN DEFECTS BY PRIVATE SELLERS; AND
PROVIDING FOR CIVIL REMEDIES, ATTORNEY FEES, AND PENALTIES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 19] may be cited as the "Montana Used
Car Lemon Law Act".

NEW SECTION. Section 2. Purpose. The purpose of [sections 1 through 19] is to prohibit dealers from
avoiding responsibility or liability for used motor vehicles sold to consumers. [Sections 1 through 19] are intended
to protect consumers from "as is" clauses while still allowing dealers to impose reasonable limitations with respect
to the sale of used motor vehicles.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 19], the following definitions
apply:

(1) "As is" means the condition of a used motor vehicle that is not subject to a dealer's express or implied
warranty and for which the consumer is responsible for the cost of any subsequent repairs to the used motor
vehicle.

(2) "Classic car" means a fine or distinctive automobile, either American-built or foreign-built, produced
between 1925 and 1948. A classic car was generally high-priced when new and was built in limited quantities.
Other factors used in determining whether an automobile is a classic car include engine displacement, custom
coachwork, and luxury accessories, such as power brakes, power clutch, and one-shot or automatic lubrication
systems.

(3) "Consumer" means:

(a) the purchaser, other than for purposes of resale, of a used motor vehicle normally used for personal,

1 family, or household purposes that is subject to a warranty;

2 (b) the spouse or child of the purchaser if the motor vehicle is transferred to the spouse or child during
3 the duration of the warranty; and

4 (c) any other person entitled by the terms of the warranty to enforce the obligations of the warranty;

5 (4) (a) "Dealer" means any person or business that sells or offers for sale a used motor vehicle and who
6 sold or offered to sell three or more used motor vehicles in the previous 12-month period.

7 (b) The term does not include a bank or financial institution, a business selling a used motor vehicle to
8 an employee of that business, or a lessor selling a leased motor vehicle to that motor vehicle's lessee, a family
9 member of the lessee, or an employee of the lessee.

10 (5) "Department" means the department of justice created in 2-15-2001.

11 (6) "Private seller" means a person who is not a dealer who sells a used motor vehicle.

12 (7) "Used motor vehicle" has the meaning provided in 61-1-101, except that the term does not include
13 a truck with 10,000 pounds or more gross vehicle weight rating or a vehicle with components, systems, fixtures,
14 appliances, furnishings, accessories, or other features that are part of a vehicle that is designed, used, and
15 maintained primarily for residential purposes.

16 (8) "Warranty" means any undertaking in connection with the sale by a dealer of a used motor vehicle
17 to refund, repair, replace, maintain, or take other action with respect to the used motor vehicle that is provided
18 without extra charge beyond the price of the used motor vehicle.

19
20 **NEW SECTION. Section 4. Written warranty required -- terms.** (1) A dealer may not sell a used
21 motor vehicle to a consumer without giving the consumer a written warranty.

22 (2) (a) If the used motor vehicle has 40,000 miles of operation or less, the warranty must be for a
23 minimum of 90 days or 4,000 miles, whichever comes first.

24 (b) If the used motor vehicle has more than 40,000 miles of operation, but not more than 100,000 miles,
25 the warranty must be for a minimum of 60 days or 2,500 miles, whichever comes first.

26 (c) If the used motor vehicle has more than 100,000 miles of operation, the warranty must be for a
27 minimum of 30 days or 1,500 miles whichever comes first.

28 (d) If the used motor vehicle's true mileage is not known, the warranty period must be determined by the
29 age of the used motor vehicle as follows:

30 (i) a used motor vehicle that is less than 3 years old must have a warranty as provided in subsection

1 (2)(a);

2 (ii) a used motor vehicle that is 3 years old or older and less than 6 years old must have a warranty as
3 provided in subsection (2)(b); and

4 (iii) a used motor vehicle that is 6 years old or older must have a warranty as provided in subsection
5 (2)(c).

6 (3) The written warranty must require the dealer or the dealer's agent to repair or, at the election of the
7 dealer, reimburse the consumer for the reasonable cost of repairing the malfunction, defect, or failure of a
8 covered part. Covered parts must include but are not limited to the following:

9 (a) with respect to the engine, all lubricated parts, water pump, fuel pump, manifolds, engine block,
10 cylinder head, rotary engine housings, and flywheel;

11 (b) with respect to the transmission, the transmission case, internal parts, and the torque converter;

12 (c) with respect to the drive axle, the front and rear drive axle housings and internal parts, axle shafts,
13 propeller shafts, and universal joints;

14 (d) with respect to brakes, the master cylinder, vacuum assist booster, wheel cylinders, hydraulic lines
15 and fittings, and disc brake calipers;

16 (e) with respect to the steering, the steering gear housing and all internal parts, power steering pump,
17 valve body, piston, and rack; and

18 (f) with respect to the alternator, the generator, starter, and ignition system, excluding the battery.

19 (4) Any required repair or reimbursement must be made by the dealer, regardless of whether the
20 warranty period has expired, if the consumer notified the dealer of the failure of a covered part within the specified
21 warranty period.

22 (5) If a new car warranty is in effect at the time of the sale of the used motor vehicle, the warranty
23 specified in this section applies to the time, if any, between the expiration of the new car warranty and the period
24 specified in subsection (2).

25 (6) The warranty provided for in this section may contain additional language excluding coverage:

26 (a) for a failure of a covered part caused by a lack of customary maintenance;

27 (b) for a failure of a covered part caused by collision, abuse, negligence, theft, vandalism, fire, or other
28 casualty and damage from the environment such as windstorms, lightning, and road hazards;

29 (c) if the odometer has been disconnected or altered so that the vehicle's actual mileage cannot be
30 readily determined or if any covered part has been altered so that the covered part or another covered part was

1 caused to fail;

2 (d) for maintenance services and the parts used in connection with those services, such as seals,
3 gaskets, oil, or grease, unless required in connection with the repair of a covered part;

4 (e) for a motor tuneup;

5 (f) for a failure resulting from racing or other competition;

6 (g) for a failure caused by towing a trailer or another vehicle unless the used motor vehicle is equipped
7 for towing as recommended by the manufacturer;

8 (h) if the used motor vehicle is used to carry passengers for hire;

9 (i) if the used motor vehicle is rented to someone else;

10 (j) for repair of valves or rings to correct low compression or oil consumption that are considered normal
11 wear;

12 (k) to the extent permitted by law, for property damage arising or allegedly arising out of the failure of
13 a covered part; and

14 (l) to the extent permitted by law, for loss of the use of the used motor vehicle, loss of time,
15 inconvenience, commercial loss, or consequential damages.

16 (7) Defects that affect only appearance may not be considered as impairing the safety or use of a used
17 motor vehicle.

18 (8) A dealer's failure to provide the warranty required by this section tolls the applicable warranty period
19 provided for in subsection (2).

20
21 **NEW SECTION. Section 5. Failure to honor warranty.** (1) If, after a reasonable period of time, a
22 dealer or the dealer's agent fails to correct a malfunction, defect, or failure as required by the warranty provided
23 for in [section 4] that substantially impairs the value of the used motor vehicle to the consumer, the dealer shall
24 accept the return of the used motor vehicle from the consumer and refund to the consumer the full purchase price
25 including any taxes or fees, less a reasonable allowance for any damage not attributable to normal wear or use.
26 An adjustment must also be made for any modifications that increase or decrease the market value of the used
27 motor vehicle.

28 (2) If the consumer traded in a vehicle when purchasing the used motor vehicle and the dealer elects
29 not to return the vehicle that was traded in, the amount returned to the consumer as a refund of the purchase
30 price must include an amount equal to credit that was given to the consumer for any trade-in. The contract of sale

1 for a used motor vehicle must include clear and conspicuous language indicating that if the consumer is entitled
2 to a refund pursuant to this section, the refund must include the amount credited to the consumer against the
3 purchase price for any vehicle traded in by the consumer if the dealer elects to not return the trade-in to the
4 consumer.

5 (3) (a) Refunds must be made to the consumer and lienholder, if any, as their interests appear on the
6 records of ownership kept by the motor vehicle division.

7 (b) (i) If the amount to be refunded to the lienholder is insufficient to discharge the lien, the dealer shall
8 notify the consumer in writing by certified mail that the consumer has 30 days to pay the lienholder the amount
9 that, together with the amount to be refunded by the dealer, is sufficient to discharge the lien.

10 (ii) The notice to the consumer must contain clear and conspicuous language warning the consumer that
11 failure to pay the lienholder within 30 days will terminate the dealer's obligation to provide a refund.

12 (iii) If the consumer fails to make the payment to the lienholder within 30 days, the dealer is not required
13 to provide a refund under this section.

14 (4) (a) A dealer may elect to offer to replace the used motor vehicle with a comparably priced vehicle,
15 with any adjustment in price to which the parties may agree.

16 (b) The consumer is not obligated to accept a replacement vehicle, but may instead elect to receive the
17 refund provided for under this section.

18 (5) It is an affirmative defense to any claim made under this section that:

19 (a) the malfunction, defect, or failure does not substantially impair the used motor vehicle's value;

20 (b) the malfunction, defect, or failure is the result of abuse, neglect, or unreasonable modifications or
21 alterations of the used motor vehicle;

22 (c) (i) the malfunction, defect, or failure was covered under an express warranty of the manufacturer of
23 the used motor vehicle or the part in question;

24 (ii) the manufacturer's warranty was transferred to the consumer;

25 (iii) the warranty is enforceable according to its terms;

26 (iv) the warranty is not inconsistent with the provisions of [sections 1 through 19]; and

27 (v) the repair authorized by the warranty was made.

28 (6) It must be presumed that a dealer has had a reasonable opportunity to correct a malfunction, defect,
29 or failure in a used motor vehicle if:

30 (a) the same malfunction, defect, or failure has been subject to repair four or more times by the dealer

1 or the dealer's agent within the warranty period, but the malfunction, defect, or failure continues to exist; or

2 (b) the vehicle is out of service by reason of repair or malfunction, defect, or failure for a total of 15 or
3 more days during the warranty period.

4 (7) (a) Except as provided in subsection (7)(d), the 15-day period provided for in subsection (6)(b) does
5 not include days when the dealer is unable to complete any repairs because of the unavailability of necessary
6 repair parts.

7 (b) In order to toll the 15-day period provided for in subsection (6)(b), the dealer shall attach to the
8 warranty repair receipt copies of order forms, invoices, receipts, or other evidence to show when a part was
9 ordered and when it was received.

10 (c) The dealer shall exercise due diligence in attempting to obtain necessary repair parts.

11 (d) If a used motor vehicle has been out of service for a total of 45 days, including a period of that time
12 is attributable to the unavailability of repair parts, the consumer is entitled to replacement of the used motor
13 vehicle or a refund as provided in this section.

14 (8) The term of a used motor vehicle warranty must be extended by any time period during which the
15 used motor vehicle is in the possession of the dealer or dealer's agent for the purpose of repairing the used motor
16 vehicle under the terms and obligations of the warranty.

17 (9) The term of a used motor vehicle warranty must be extended by any time period during which the
18 used motor vehicle is out of service while undergoing repairs under the manufacturer's warranty.

19
20 **NEW SECTION. Section 6. Consumer remedies -- "as is" sales prohibited -- scope.** (1) The
21 provisions of [sections 1 through 19] may not be interpreted to limit the rights or remedies available to consumers
22 under other applicable provisions of law.

23 (2) A used motor vehicle subject to the provisions of [sections 1 through 19] may not be sold by a dealer
24 "as is".

25 (3) The provisions of [sections 1 through 19] do not apply to:

26 (a) used motor vehicles sold for less than \$300; or

27 (b) the sale of classic cars.
28

29 **NEW SECTION. Section 7. Dealer's dispute settlement procedures -- certification -- prohibited**
30 **contents.** (1) A dealer who has established an informal dispute settlement procedure under the provisions of Title

16, Code of Federal Regulations, part 703, shall submit a copy of the procedure to the department. The department shall issue a certificate of approval to a dealer whose procedure complies in all respects with the federal regulations and subsection (2) of this section and shall maintain a record of the dealer's procedures that are certified. The department may issue subpoenas requiring the attendance of witnesses and the production of records, documents, or other evidence necessary to the department in an investigation related to the certification of a dealer's informal dispute settlement procedure.

(2) A dealer's informal dispute settlement procedure must afford the consumer or the consumer's representative an opportunity to appear and present evidence in Montana at a location reasonably convenient to the consumer and, further, may not include any practices that:

(a) delay a decision in any dispute beyond 60 days after the date on which the consumer initially resorts to the dispute settlement procedure;

(b) delay performance of remedies awarded in a settlement beyond 10 days after a decision, except that a dealer may have 30 days following the date of decision to replace a motor vehicle or make refund to the consumer as provided in [section 5];

(c) require the consumer to make the motor vehicle available for inspection by a dealer's representative more than once;

(d) fail to consider in decisions any remedies provided by [sections 1 through 19]; or

(e) require the consumer to take any action or assume any obligation not specifically authorized under the federal regulations referred to in subsection (1).

NEW SECTION. Section 8. Annual audit -- revocation or suspension of certification. (1) A dealer establishing an informal dispute resolution procedure shall file with the department a copy of the annual audit required under Title 16, Code of Federal Regulations, part 703, along with any additional information that the department may require, including the number of refunds and replacements made by the dealer during the period audited.

(2) The department may, after notice and hearing as provided in Title 2, chapter 4, suspend or revoke the certification of a dealer's informal dispute resolution procedure upon a finding that the procedure is being used to create hardship to consumers. The department may consider the revocation or suspension in licensing dealers.

NEW SECTION. Section 9. Arbitration procedure. (1) The department shall provide an independent

1 forum and arbitration procedure for the settlement of disputes between consumers and dealers that do not
2 conform to all applicable warranties under the provisions of [sections 1 through 19]. The procedure must conform
3 to Title 27, chapter 5. All arbitration must take place in Montana at a place reasonably convenient to the
4 consumer.

5 (2) Except as provided in [section 14], a consumer owning a motor vehicle that fails to conform to all
6 applicable warranties may bring a grievance before an arbitrator only if the dealer has not established an informal
7 dispute settlement procedure that has been certified by the department under [section 7].

8
9 NEW SECTION. **Section 10. Selection of arbitrator.** An arbitrator for a grievance under [sections 1
10 through 19] must be chosen by the department. The department shall maintain a list of persons willing to serve
11 as an arbitrator.

12
13 NEW SECTION. **Section 11. Implementation of arbitration.** (1) A consumer may initiate a request
14 for arbitration by filing a notice with the department. The consumer shall file, on a form prescribed by the
15 department, any information considered relevant to the resolution of the dispute and shall return the form, along
16 with a \$50 filing fee, within 5 days after receiving the form. The form must offer the consumer the choice of
17 presenting any subsequent testimony orally or in writing, but not both.

18 (2) The department shall determine whether the complaint alleges the violation of any applicable
19 warranty under [sections 1 through 19]. If the department determines that a complaint does not allege a warranty
20 violation, it shall refund the filing fee.

21 (3) Upon acceptance of a complaint, the department shall notify the dealer of the filing of a request for
22 arbitration and shall obtain from the dealer, on a form prescribed by the department, any information considered
23 relevant to the resolution of the dispute. The dealer shall return the form within 15 days of receipt, with a filing fee
24 of \$250.

25 (4) Fees collected under this section must be deposited in a special revenue account for the use of the
26 department in administering [sections 1 through 19].

27 (5) The dealer's fee provided in subsection (3) is due only if the department's arbitration procedures are
28 used.

29
30 NEW SECTION. **Section 12. Arbitration -- role of department -- expert.** (1) The department shall

investigate, gather, and organize all information necessary for a fair and timely decision in each dispute. The department may, on behalf of the arbitrator, issue subpoenas to compel the attendance of witnesses and the production of documents, papers, and records relevant to the dispute.

(2) If requested by the arbitrator, the department may forward a copy of all written testimony and documentary evidence to an independent technical expert certified by the national institute of automotive excellence. The expert may review the material and be available to advise and consult with the arbitrator. The expert, at the arbitrator's request, may be present whenever oral testimony is presented.

NEW SECTION. Section 13. Action by arbitrator -- decision. (1) The arbitrator shall, as expeditiously as possible but not later than 60 days after the department has accepted a complaint, render a fair decision based on the information gathered and disclose the arbitrator's findings and reasoning to the parties.

(2) The decision must provide appropriate remedies, including but not limited to:

(a) repair of the used motor vehicle;

(b) replacement of the used motor vehicle with an identical used motor vehicle or a comparable used motor vehicle acceptable to the consumer;

(c) a refund as provided in [section 5];

(d) any other remedies available under the applicable warranties or 15 U.S.C. 2301 through 2312, as in effect on October 1, 1983; or

(e) reimbursement of expenses and costs to the prevailing party.

(3) The decision must specify a date for performance and completion of all awarded remedies. The department shall contact the prevailing party within 10 working days after the date for performance to determine whether performance has occurred. The parties shall act in good faith in abiding by any decision. In addition, if the decision is not accepted, the parties shall follow the provisions of Title 27, chapter 5. If the court determines that the appellant has acted without good cause in bringing an appeal of an award, the court, in its discretion, may grant to the respondent costs and reasonable attorney fees.

NEW SECTION. Section 14. Nonconforming procedure -- arbitration de novo. A consumer injured by the operation of any procedure that does not conform with procedures established by a dealer pursuant to [section 7] and the provisions of Title 16, Code of Federal Regulations, part 703, may appeal any decision rendered as the result of the procedure by requesting arbitration de novo of the dispute by a department

1 arbitrator. Filing procedures and fees for appeals must be the same as those required in [sections 9 through 11].
2 The findings of the dealer's informal dispute settlement procedure are admissible in evidence at the department's
3 arbitration hearing and in any civil action arising out of any warranty obligation or matter related to the dispute.
4

5 **NEW SECTION. Section 15. Disclosure of rights.** (1) The department shall adopt rules and develop
6 forms to implement the notice provision in subsection (2). The forms must be used by a dealer in the sale of used
7 motor vehicles covered by [sections 1 through 19].

8 (2) Clear and conspicuous notice of the warranties created by [sections 1 through 19] must be given to
9 the consumer in writing at the time the consumer purchases a used motor vehicle from the dealer. The notice
10 required by [sections 1 through 19] must describe the procedures available to redress violations of [sections 1
11 through 19] and must contain the telephone number of the department.

12 (3) A dealer's failure to provide the consumer with the forms promulgated by the department constitutes
13 prima facie evidence of bad faith and unfair and deceptive trade practices under Title 30, chapter 14, part 2.
14

15 **NEW SECTION. Section 16. Attorney fees.** (1) A consumer who prevails in an action to enforce the
16 provisions of [sections 1 through 19] is entitled to recover reasonable attorney fees and costs.

17 (2) If a court finds that a consumer has brought a frivolous lawsuit or has brought a lawsuit in bad faith,
18 the dealer is entitled to reasonable attorney fees and costs.
19

20 **NEW SECTION. Section 17. Notice to dealers.** The department shall make a reasonable attempt to
21 notify all dealers subject to the provisions of [sections 1 through 19] by distributing copies of [sections 1 through
22 19] to each dealer. The department may include copies of [sections 1 through 19] at the time a dealer's license
23 is first issued or is renewed.
24

25 **NEW SECTION. Section 18. Private sellers.** (1) (a) A private seller shall disclose to a prospective
26 consumer any defects known to the private seller that impair the used motor vehicle's safety or substantially
27 impairs its use.

28 (b) If a private seller fails to disclose a defect as provided in subsection (1)(a), the consumer is entitled
29 to rescind the sale and return the vehicle within 30 days of the date of the sale. If the consumer returns the
30 vehicle, the consumer is entitled to a return of the purchase price less a reasonable amount for normal wear and

1 use.

2 (2) A consumer who prevails in an action to enforce the provisions of this section is entitled to recover
3 reasonable attorney fees and costs.

4 (3) If a court finds that a consumer has brought a frivolous lawsuit or has brought a lawsuit in bad faith,
5 the private seller is entitled to reasonable attorney fees and costs.

6
7 **NEW SECTION. Section 19. Penalty -- statute of limitations.** (1) Any intentional violation of a
8 provision of [sections 1 through 19], except for a violation of [section 18], constitutes an unfair or deceptive trade
9 practice.

10 (2) An action brought to enforce a provision of [sections 1 through 19] must be commenced within 2
11 years of the date of the original delivery of the used motor vehicle to the consumer.

12
13 **NEW SECTION. Section 20. Codification instruction.** [Sections 1 through 19] are intended to be
14 codified as an integral part of Title 61, chapter 4, and the provisions of Title 61, chapter 4, apply to [sections 1
15 through 19].

16 - END -